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**CLOSED**

12-7-94

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

HI-MILL MANUFACTURING CO.,

Defendant.

CIVIL ACTION NO.

**94-60261**

**GEORGE LAPLATA**

FILED

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CIVIL ACTION NO.

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Hi-Mill Superfund Site in Highland, Michigan, together with accrued interest; and (2) performance of studies and response work by the Defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of

Michigan (the "State") on March 23, 1994, of negotiations with potentially responsible parties regarding the implementation of groundwater monitoring and institutional controls for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior on March 23, 1994, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

E. The Defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on February 21, 1990, 55 Fed. Reg. 6160;

G. In response to a release or a substantial threat of a release of hazardous substance at or from the Site, the Settling Defendant commenced on November 6, 1989, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430;

H. The Settling Defendant completed a Remedial Investigation ("RI") Report on February 5, 1993, and a Feasibility Study ("FS") Report on July 28, 1993;

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for response action on August 19, 1993, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for response action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the response action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 28, 1993, on which the State had a reasonable opportunity to review and comment. The ROD concludes that no applicable or relevant and appropriate requirements (ARARs), within the meaning of CERCLA Section 121, including requirements promulgated under the Michigan Environmental Response Act, Michigan PA 1982, No. 307, as amended, apply to the proposed response action. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

K. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by

the Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

L. Solely for the purposes of Section 113(j) of CERCLA, the response action selected by the ROD and the Work to be performed by the Settling Defendant shall constitute a response action taken or ordered by the President.

M. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate status of Settling Defendant including, but not limited to, any transfer of assets or real or personal property shall in no way alter Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

#### IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in



CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXX). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"MDNR" shall mean the Michigan Department of Natural Resources and any successor departments or agencies of the State.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs,

travel costs, laboratory costs, the costs incurred pursuant to Sections VII, VIII, X (including, but not limited to, attorneys fees and the amount of just compensation), XVI, and Paragraph 80 of Section XXII. Future Response Costs shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site between August 31, 1993 and the effective date of this Consent Decree and all interest on the Past Response Costs from August 31, 1993 to the date of payment of the Past Response Costs, pursuant to Paragraph 49 of Section XVII.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the response action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States and the Settling Defendant.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs and interest, that the United

States incurred and paid with regard to the Site prior to August 31, 1993.

"Performance Standards" shall mean those standards of control and other substantive requirements, criteria or limitations set forth in the ROD or Section II of the SOW.

"Plaintiff" shall mean the United States .

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Hi-Mill Manufacturing Site signed on September 28, 1993, by the Regional Administrator, EPA Region V, and all attachments thereto.

"Response Design" shall mean those activities to be undertaken by the Settling Defendant to develop the final plans and specifications for the Response Action pursuant to the Response Design Work Plan.

"Response Design Plan" shall mean the document submitted by the Settling Defendant pursuant to Paragraph 11.a of this Consent Decree and described more fully in Paragraph 11.b.

"Response Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendant to implement the final plans and specifications submitted by the Settling Defendant pursuant to the Response Design Plan and approved by EPA.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendant" shall mean the Hi-Mill Manufacturing Co.

"Site" shall mean the Hi-Mill Manufacturing Co. Superfund site, encompassing approximately 4.5 acres, located at 1704 Highland Road in Highland, Oakland County, Michigan and depicted generally on the map attached as Appendix C.

"State" shall mean the State of Michigan.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Design, Response Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Defendant to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).; and (4) any "hazardous material" under the Michigan Hazardous Waste Management Act, Public Act 64.

"Work" shall mean all activities Settling Defendant is required to perform under this Consent Decree, except those required by Section XXVI (Retention of Records).

## V. GENERAL PROVISIONS

### 5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by Settling Defendant and to reimburse response costs of the Plaintiff.

6. Commitments by Settling Defendant

a. Settling Defendant shall finance and perform the Work in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to this Consent Decree. Settling Defendant shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

7. Compliance With Applicable Law

All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and §300.5 of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. Where any portion of the Work requires a federal or state permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Settling Defendant may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice of Obligations to Successors-in-Title

a. Within 15 days after the entry of this Consent Decree, Settling Defendant shall record a certified copy of this Consent Decree with the Recorder's Office [or Registry of Deeds or other appropriate office where land ownership and transfer records are maintained for the property], Oakland County, State of Michigan. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of Settling Defendant with respect to the provision of access under Section X (Access) and the implementation of institutional controls under Section II of the SOW shall be binding upon any and all persons who subsequently acquire any interest in the Site or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this

Consent Decree, Settling Defendant shall record at the Recorder's Office [or Registry of Deeds or other appropriate office where land ownership and transfer records are maintained for the property] a notice of obligation to provide access under Section X (Access) and deed restrictions restricting residential development of the Site (including, but not limited to, construction and installation of drinking water wells on the Site.). Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. Settling Defendant and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendant's obligations under this Consent Decree, including its obligations to provide or secure access pursuant to Section X, shall continue to be met by the Settling Defendant. In addition, if the United States approves, the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of Settling Defendant to comply with the Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendant pursuant to Sections VI (Performance of the Work by Settling Defendant), VII (Additional Response Actions), VIII (U.S. EPA Periodic Review), and IX (Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA after a reasonable opportunity for review and comment by the State. Within 30 days after Settling Defendant's execution of this Consent Decree, Settling Defendant shall notify EPA and the State in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendant proposes to change a Supervising Contractor, Settling Defendant shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendant in writing. Settling Defendant shall submit to EPA and the State a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of



the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendant may select any contractor from that list that is not disapproved and shall notify EPA and the State of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendant from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendant may seek relief under the provisions of Section XIX (Force Majeure) hereof.

11. Design.

a. Within 120 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Settling Defendant shall submit to EPA and the State a design plan for the Response Action at the Site ("Response Design Plan"). The Response Design Plan shall document the overall management strategy for performing the design, construction, operation, maintenance and monitoring of the response action set forth in the ROD in accordance with the SOW and, upon its approval by EPA, shall be incorporated into and become enforceable under this Consent Decree. Within 120 days after EPA's issuance of an authorization to proceed, Settling Defendant shall submit to EPA and the State a Health and Safety Plan for field activities which conforms to the

applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Response Design Plan shall include plans and schedules for implementation of all response design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) Quality Assurance Project Plan (QAPP) in accordance with Section IX (Quality Assurance, Sampling and Data Analysis); (2) Groundwater Sampling and Analysis Plan; (3) Design Plans and Specifications; (4) Cost Estimates; (5) Project Schedule; (6) Construction Quality Assurance Objectives; and (7) Operation and Maintenance Plan.

c. Upon approval of the Response Design Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Defendant shall implement the Response Design Plan.

12. The Work performed by the Settling Defendant pursuant to this Consent Decree shall include the obligation to achieve the Performance Standards.

13. Settling Defendant acknowledges and agrees that nothing in this Consent Decree, the SOW, or the Response Design Plan constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the Plans will achieve the Performance Standards. Settling Defendant's compliance with the work requirements shall not foreclose Plaintiff from seeking compliance with all terms and

conditions of this Consent Decree, including, but not limited to, the applicable Performance Standards.

14. a. Settling Defendant shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

b. The Settling Defendant shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendant shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

#### **VII. ADDITIONAL RESPONSE ACTIONS**

15. In the event that EPA determines, after consultation with the State, or the Settling Defendant or State propose that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD,

notification of such additional response actions shall be provided to the Project Coordinator for the other party(ies) and the State.

16. In the event that EPA or the Settling Defendant propose that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD, written notification of such additional response actions shall be provided to the Project Coordinator for the other party. EPA shall review any proposal by the Settling Defendants to determine whether any additional response action is necessary. After an opportunity for review and comment by the State on any proposal, EPA shall determine what additional response action is necessary and appropriate. If required by Sections 113(k)(2), or 117 of CERCLA, the Settling Defendant and the public will be provided with an opportunity to comment on any additional response actions proposed and an opportunity to submit written comments for the record during the public comment period. Notice of the selection shall be served on the Settling Defendant and the State.

17. Within 30 days of receipt of notice from EPA that additional response actions are necessary, Settling Defendant shall submit to EPA and the State for EPA approval, after reasonable opportunity for review and comment by the State, a work plan for the additional response actions. The plan shall conform to the applicable requirements of Paragraph 11. Upon approval of the plan pursuant to Section XII (Submissions Requiring Agency Approval), Settling Defendant shall implement the plan for additional response actions in accordance with the schedule contained therein.

18. Settling Defendant may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD. Such a dispute shall be resolved pursuant to Paragraphs 60-63 of this Consent Decree.

#### VIII. EPA PERIODIC REVIEW

19. Settling Defendant shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every five years if required by Section 121(c) of CERCLA and any applicable regulations. Copies of the studies and any reports, proposals, documents or items required by EPA shall be submitted by the Settling Defendant to EPA for approval under Section XII and to the State for review and comment.

20. The Settling Defendant and the State shall be provided with at least a (30) day period to review and comment on any EPA proposed further response action under Section 121(c). If required by Sections 113(k)(2) or 117 of CERCLA, the public also will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region V, or his/her delegate will determine in writing whether further response actions are appropriate.

21. If the Regional Administrator, EPA Region V, or his/her delegate determines that information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, indicates that the Response Action is not protective of human health and the environment, the Settling Defendant shall undertake any further response actions EPA has determined are appropriate, unless their liability for such further response actions is barred by the Covenant Not to Sue set forth in Section XXII. Settling Defendant shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendant) and shall implement the plan approved by EPA. The Settling Defendant may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (1) EPA's determination that the response action is not protective of human health and the environment, (2) EPA's selection of the further response actions ordered as arbitrary and capricious or otherwise not in accordance with law, or (3) EPA's determination that the Settling Defendant's liability for the further response actions requested is reserved in Paragraphs 77, 78, or 79 or otherwise not barred by the Covenant Not to Sue set forth in Section XXII.

**IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS**

22. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all monitoring samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objective Guidance,"

(EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent amendments to such guidelines upon notification by EPA to Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") to EPA and the State that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendant shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February

1988, and any amendments made thereto during the course of the implementation of this Decree. Settling Defendant shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

23. Upon request, Settling Defendant shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Settling Defendant shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Settling Defendant to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendant's implementation of the Work.

24. Settling Defendant shall submit to EPA and the State two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

#### X. ACCESS



26. Commencing upon the date of lodging of this Consent Decree, Settling Defendant agrees to provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by Settling Defendant, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XXV; and
- g. Assessing Settling Defendant's compliance with this Consent Decree.

27. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendant, Settling Defendant shall use best efforts to secure from such persons access for Settling Defendant, as well as for the

United States and its representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Work is not obtained within 45 days of the date of lodging of this Consent Decree, or within 45 days of the date EPA notifies the Settling Defendant in writing that additional access beyond that previously secured is necessary, Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps Settling Defendant has taken to attempt to obtain access. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access. Settling Defendant shall reimburse the United States in accordance with the procedures in Section XVII (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access.

28. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

#### XI. REPORTING REQUIREMENTS

29. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to EPA and the State two (2) copies of written monthly progress reports that: (a) describe actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of

all results of sampling and tests and all other data received or generated by Settling Defendant or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendant has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendant shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies Settling Defendant pursuant to Paragraph 45.b of Section XV (Certification of Completion). If requested by EPA, Settling Defendant shall also provide briefings for EPA to discuss the progress of the Work.

30. The Settling Defendant shall notify EPA of any change in the schedule described in the monthly progress report for the

performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

31. Upon the occurrence of any event during performance of the Work that Settling Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendant shall within 24 hours of the on-set of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region V, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

32. Within 20 days of the onset of such an event, Settling Defendant shall furnish to Plaintiff a written report, signed by the Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto. Settling Defendants shall simultaneously submit a copy of the reports to the State.

33. Settling Defendant shall submit two (2) copies of all plans, reports, and data required by the SOW, the Response Design Plan, or any other approved plans to EPA in accordance with the

schedules set forth in such plans. Settling Defendant shall simultaneously submit two (2) copies of all such plans, reports and data to the State.

34. All reports and other documents submitted by Settling Defendant to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendant.

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

35. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendant modify the submission; or (e) any combination of the above.

36. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 35(a), (b), or (c), Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 35(c) and the submission has a material defect, EPA

retains its right to seek stipulated penalties, as provided in Section XXI.

37. a. Upon receipt of a notice of disapproval pursuant to Paragraph 35(d), Settling Defendant shall, within 14 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXI, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 38.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 35(d), Settling Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

38. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to amend or develop the plan, report or other item. Settling Defendant shall implement any such plan, report, or item as amended or developed by EPA, subject only to its right to invoke the procedures set forth in Section XX (Dispute Resolution).

39. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendant invokes the dispute resolution procedures set forth in Section XX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXI.

40. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

#### XIII. PROJECT COORDINATORS

41. Within 20 days of lodging this Consent Decree, Settling Defendant and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated

is changed, the identity of the successor will be given to the other parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendant's Project Coordinator shall not be an attorney for Settling Defendant in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during response activities.

42. Plaintiff may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.



XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

43. Within 30 days of entry of this Consent Decree, Settling Defendant shall establish and maintain financial security in the amount of \$600,000 in one of the following forms:

(a) A surety bond guaranteeing performance of the Work;

(b) One or more irrevocable letters of credit equalling the total estimated cost of the Work;

(c) A trust fund;

(d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Settling Defendant; or

(e) A demonstration that Settling Defendant satisfies the requirements of 40 C.F.R. Part 264.143(f).

In the event Settling Defendant establishes financial security as provided in subparagraph (a) or (b), Settling Defendant may, upon completion of the installation of the groundwater monitoring wells required by the Sow and Response Design Plan, maintain financial security in the amount of \$200,000. However, Settling Defendant shall make no reduction in the amount of financial security maintained until the EPA Project Coordinator has determined in writing that Settling Defendant has satisfactorily completed installation of the groundwater monitoring wells.

44. If the Settling Defendant seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 43(d) of this Consent Decree, Settling

Defendant shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendant seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 43(d) or (e), it shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendant shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 43 of this Consent Decree. Settling Defendant's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

#### XV. CERTIFICATION OF COMPLETION

##### 45. Completion of the Response Action

a. Within 90 days after Settling Defendant concludes that the Response Action has been fully performed and the Performance Standards have been attained, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant and EPA. If, after the pre-certification inspection, the Settling Defendant still believes that the Response Action has been fully performed and the Performance Standards have been attained, it shall submit a written report requesting certification to EPA for approval, with a copy to the State,

pursuant to Section XII (Submissions Requiring Agency Approval) within 30 days of the inspection. In the report, a registered professional engineer and the Settling Defendant's Project Coordinator shall state that the Response Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of Settling Defendant or the Settling Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Response Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendant in writing of the activities that must be undertaken to complete the Response Action and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendant shall perform all activities

described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Response Action has been fully performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendant. This certification shall constitute the Certification of Completion of the Response Action for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants Not to Sue by Plaintiff). Certification of Completion of the Response Action shall not affect Settling Defendant's obligations under this Consent Decree.

#### 46. Completion of the Work

a. Within 90 days after Settling Defendant concludes that all phases of the Work (including O & M), have been fully performed, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant and EPA . If, after the pre-certification inspection, the Settling Defendant still believes that the Work has been fully performed, Settling Defendant shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The

report shall contain the following statement, signed by a responsible corporate official of Settling Defendant or the Settling Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendant and after a reasonable opportunity for review and comment by the State, that the Work has been fully performed in accordance

with this Consent Decree, EPA will so notify the Settling Defendant in writing.

**XVI. EMERGENCY RESPONSE**

47. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, subject to Paragraph 48, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendant shall notify the EPA Emergency Response Unit, Region V. Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendant shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

48. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States

to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XVII. REIMBURSEMENT OF RESPONSE COSTS

49. Within 30 days of the effective date of this Consent Decree, Settling Defendant shall:

a. Pay to the United States \$169,871.30, in reimbursement of Past Response Costs and unrecovered interest, by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing the U.S.A.O. file number \_\_\_\_\_, the EPA region and Site/Spill ID number 059Q and DOJ case number 90-11-2-974. Payment shall be made in accordance with instructions provided by the Plaintiff to Settling Defendant upon execution of the Consent Decree. Payments by EFT must be received at the U.S. D.O.J. lockbox bank by 11:00 A.M. (Eastern Time) to be credited on that day.

50. Settling Defendant shall reimburse the United States for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States. The United States will send Settling Defendant a bill requiring payment that includes an annotated Cost Summary on a periodic basis. Settling Defendant shall make all payments within 30 days of Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 51. The Settling Defendant shall make all payments required by this Paragraph in the form of a certified

check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA region and Site/Spill ID number 059Q, and DOJ case number 90-11-2-974. The Settling Defendant shall forward the certified check(s) to U.S. EPA Region V, Attention: Superfund Accounting, P. O. Box 70753, Chicago, Illinois 60673, and shall send copies of the check(s) to the United States as specified in Section XXVII (Notices and Submissions).

51. Settling Defendant may contest payment of any Future Response Costs under Paragraph 50 if it determines that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendant shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 50. Simultaneously, the Settling Defendant shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the State of Michigan and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendant shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the



correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Defendant shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 50. If Settling Defendant prevails concerning any aspect of the contested costs, Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 50; Settling Defendant shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

52. In the event that the payments required by Paragraph 49 are not made within 30 days of the effective date of this Consent Decree or the payments required by Paragraph 50 are not made within 30 days of the Settling Defendant's receipt of the bill, Settling Defendant shall pay interest on the unpaid balance at the rate

established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. The interest to be paid on Past Response Costs shall begin to accrue on the effective date of the Consent Decree. The interest on Future Response Costs shall begin to accrue on the date of the Settling Defendant's receipt of the bill. Interest shall accrue at the rate specified through the date of the Settling Defendant's payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to make timely payments under this Section.

#### XVIII. INDEMNIFICATION AND INSURANCE

53. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Settling Defendant shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Further, the Settling Defendant agrees to pay the United States all costs it incurs including, but not limited to,

attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendant nor any such contractor shall be considered an agent of the United States.

54. Settling Defendant waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

55. No later than 15 days before commencing any on-site Work, Settling Defendant shall secure, and shall maintain until the first

anniversary of EPA's Certification of Completion of the Response Action pursuant to Paragraph 45.b. of Section XV (Certification of Completion) comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit naming as additional insured the United States. In addition, for the duration of this Consent Decree, Settling Defendant shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendant demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

#### XIX. FORCE MAJEURE

56. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant or of any entity controlled by Settling

Defendant, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

57. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Waste Management Division, EPA Region V, within 48 hours of when Settling Defendant first knew or should have known that the event might cause a delay. Within 5 days thereafter, Settling Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the

delay; the Settling Defendant's rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure for that event. Settling Defendant shall be deemed to have notice of any circumstance of which its contractors or subcontractors had or should have had notice.

58. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendant in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

59. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 56 and 57, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

#### XX. DISPUTE RESOLUTION

60. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendant that have not been disputed in accordance with this Section.

61. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the

time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

62. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under paragraph 63 or 64.

b. Within fourteen (14) days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 63 or 64.

c. If there is disagreement between EPA and the Settling Defendant as to whether dispute resolution should proceed under Paragraph 63 or 64, the parties to the dispute shall follow the



procedures set forth in the paragraph determined by EPA to be applicable. However, if Settling Defendant ultimately appeals to the court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 63 and 64.

63. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Paragraph. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Waste Management Division, EPA Region V, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph

63.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 63.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 63.b. shall be reviewable by this Court, provided that a notice of judicial appeal is filed by Settling Defendant with the Court and served on all Parties within 10 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's notice of judicial appeal.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraphs 63.a.

64. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 62, the Director of the

Waste Management Division, EPA Region V, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on Settling Defendant unless, within 10 days of receipt of the decision, Settling Defendant files with the Court and serves on the parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's notice of judicial appeal.

b. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

65. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Settling Defendant under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 74. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

# XXI. STIPULATED PENALTIES

66. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraph 67 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Defendant shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

67.a. The following stipulated penalties shall be payable per violation per day to the United States for failure to install or monitor groundwater monitoring wells in the manner and according to the schedule set forth in the SOW

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$300	1-7 days
\$750	8-30 days
\$1500	31+ days

b. The following stipulated penalties shall be payable per violation per day to the United States for failure to submit timely or adequate reports pursuant to Task III of the SOW:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$300	1-7 days

\$250  
\$1500

8-30 days  
31+ days

68. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

69. Following EPA's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendant written notification of the same and describe the noncompliance. EPA may send Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Settling Defendant of a violation.

70. All penalties owed to the United States under this section shall be due and payable within 30 days of the Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XX (Dispute Resolution).

71. All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, and shall reference the EPA Region and Site/Spill ID Number 059Q and DOJ Case Number 90-11-2-974. Copies

of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions).

72. The payment of penalties shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

73. Penalties shall continue to accrue as provided in Paragraph 70 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision,

the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that it prevails.

74. a. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 72 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA.

75. No payments made under this Section shall be tax deductible for Federal tax purposes.

**XXII. COVENANTS NOT TO SUE BY PLAINTIFF**

76. In consideration of the actions that will be performed and the payments that will be made by Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 77, 78, and 79 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by

EPA of the payments required by Paragraph 49 of Section XVII (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Response Action by EPA pursuant to Paragraph 45.b of Section XV (Certification of Completion). These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue are not intended to, and do not, relieve Settling Defendant of its obligation to perform additional response actions, pursuant to Section VII of this Decree; including, but not limited to its obligation to perform additional response actions, if EPA, after consultation with the State, determines that monitoring results indicate (1) organic contamination from the shallow groundwater unit appears to be migrating toward nearby surface water bodies at concentrations that could potentially exceed the more stringent of Federal and State water quality standards, or (2) the intermediate aquifer is contaminated with organics at levels which could potentially cause risks to human health. These covenants not to sue extend only to Settling Defendant and do not extend to any other person.

77. United States' Pre-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to



compel Settling Defendant (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to certification of completion of the Response Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that the Response Action is not protective of human health or the environment.

78. United States' Post-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to certification of completion of the Response Action:

- (i) conditions at the Site, previously unknown to the EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part, after the certification of completion,

and these previously unknown conditions or this information together with other relevant information indicate that the Response Action is not protective of human health or the environment.

79. For purposes of Paragraph 77, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 78, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision, the administrative record supporting the Record of Decision, and any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Response Action.

80. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 76. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to, the following:

- (1) claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
- (2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- (3) liability for damages for injury to, destruction of, or loss of natural resources;

(4) liability for response costs that have been or may be incurred by the U.S. Department of the Interior

(5) criminal liability;

(6) liability for violations of federal or state law which occur during or after implementation of the Response Action.

81. In the event EPA determines that Settling Defendant has failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Settling Defendant may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that Settling Defendant failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendant shall pay pursuant to Section XVII (Reimbursement of Response Costs).

82. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

#### XXIII. COVENANTS BY SETTLING DEFENDANT

83. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including,

but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, 113 or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site. However, Settling Defendant reserves, and this Consent Decree is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (not including oversight or approval of the Settling Defendant's plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

#### XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

84. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with

respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

85. With regard to claims for contribution against Settling Defendant for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

86. Settling Defendant agrees that with respect to any suit brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

87. Settling Defendant also agrees that with respect to any suit brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendant shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

88. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have

been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXII (Covenants Not to Sue by Plaintiffs).

XXV. ACCESS TO INFORMATION

89. Settling Defendant shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendant shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

90. a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified

Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendant.

b. Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

91. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

#### XXVI. RETENTION OF RECORDS

92. Until 10 years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 46.b of Section XV

(Certification of Completion of the Work), Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Settling Defendant's receipt of EPA's notification pursuant to Paragraph 46.b of Section XV (Certification of Completion), Settling Defendant shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

93. At the conclusion of this document retention period, Settling Defendant shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendant shall deliver any such records or documents to EPA . Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information:



and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

94. Settling Defendant hereby certifies that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

#### XXVII. NOTICES AND SUBMISSIONS

95. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
Re: DJ # 90-11-2-974

As to EPA

Director, Waste Management Division  
United States Environmental Protection Agency  
Region V (H-7J)  
77 West Jackson Blvd  
Chicago, Illinois 60604

Karla Johnson  
EPA Project Coordinator  
United States Environmental Protection Agency  
Region V (HSRW-6J)  
77 West Jackson Blvd.  
Chicago, Illinois 60604

As to the State:

Debbie Larson  
State Project Coordinator  
Stevens T. Mason Building  
P.O. Box 30026  
Lansing, Michigan 48009

As to the Settling Defendants:

Hi-Mill Manufacturing Company  
Attention: Robert Beard  
1704 E. Highland  
Highland, Michigan 48356

Jack D. Shumate  
Butzel Long  
150 E. Jefferson, Suite 900  
Detroit, Michigan 48226

**XXVIII. EFFECTIVE DATE**

96. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

**XXIX. RETENTION OF JURISDICTION**

97. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XX (Dispute Resolution) hereof.

**XXX. APPENDICES**

98. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the description and/or map of the Site.

**XXXI. COMMUNITY RELATIONS**

99. Settling Defendant shall propose to EPA its participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for Settling Defendant under the Plan. Settling Defendant shall also cooperate with EPA in providing information regarding the Work to the public.

As requested by EPA , Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

**XXXII. MODIFICATION**

100. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and Settling Defendant after an opportunity for review and comment by the State. All such modifications shall be made in writing.

101. No material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendant, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and Settling Defendant.

102. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

**XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

103. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.

§ 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

104. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### XXXIV. SIGNATORIES/SERVICE

105. The undersigned representative of Settling Defendant and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

106. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

107. Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of

that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

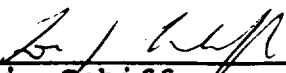
SO ORDERED THIS 7 DAY OF Dec, 19  .


  
United States District Judge


THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Hi-Mill Manufacturing Co., relating to the Hi-Mill Manufacturing Co. Superfund Site.

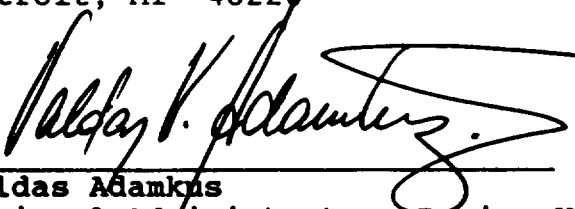
FOR THE UNITED STATES OF AMERICA

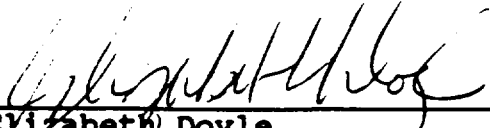
Date: \_\_\_\_\_

  
 Lois Schiffer  
 Acting Assistant Attorney General  
 Environment and Natural Resources  
 Division  
 U.S. Department of Justice  
 Washington, D.C. 20530

  
 Maureen Katz  
 Environmental Enforcement Section  
 Environment and Natural Resources  
 Division  
 U.S. Department of Justice  
 Washington, D.C. 20530

  
 L. MICHAEL WICKS  
 Assistant United States Attorney  
 Eastern District of Michigan  
 U.S. Department of Justice  
 817 Federal Building  
 Detroit, MI 48226

  
 Valdas Adamkus  
 Regional Administrator, Region V  
 U.S. Environmental Protection  
 Agency  
 77 West Jackson Blvd.  
 Chicago, Illinois 60604



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Elizabeth Doyle  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency  
Region V - (CS-3T)  
77 West Jackson Blvd  
Chicago, Illinois 60604

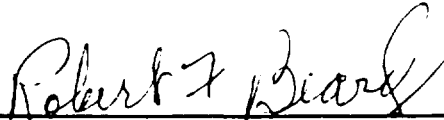


THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Hi-Mill Manufacturing Co., relating to the Hi-Mill Manufacturing Co. Superfund Site.

FOR THE HI-MILL MANUFACTURING COMPANY, INC.

Date:

6/24/94



[Name -- Please Type] Robert F. Beard  
[Title -- Please Type] President  
[Address -- Please Type] Hi-Mill Manufacturing  
Company  
1704 E. Highland  
Highland, MI 48356

Agent Authorized to Accept Service on Behalf of Above-signed  
Party:

Jack D. Schumate, Esq.  
Attorney, Butzel Long  
150 E. Jefferson, Suite 900  
Detroit, Michigan 48226  
(313) 225-7075



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JAN 08 1995

REPLY TO THE ATTENTION OF:

MEMORANDUM

SUBJECT: Entry of U.S. V. Hi-Mill Mfg. Co. RD/RA Consent Decree  
Site No. 059Q4

FROM: Jane Lupton, Acting Chief *Jane M. Lupton*  
Solid Waste and Emergency Response Branch

TO: Jodi Traub, Acting Associate Division Director  
Waste Management Division

Robert Springer, Assistant Regional  
Administrator for Planning and Management

Attached please find a copy of the EPA Enforcement Accounts Receivable Control Number Form for the Hi-Mill Manufacturing Co. RD/RA consent decree entered on December 7, 1994, in United States v. Hi-Mill Manufacturing Co., United States District Court for the Eastern District of Michigan, Case No. 94-CV-60261-AA. The settlement provides for performance of the selected response action as well as reimbursement of the Agency's future response costs and payment of \$195,978.42 in past costs under Section 107 of CERCLA. The facility is located at 1704 East Highland in Highland, Michigan.

Pursuant to paragraph 49.a. of the consent decree, Hi-Mill must pay to the United States \$195,978.42 within thirty (30) days of December 7, 1994, by electronic transfer to the U.S. DOJ lockbox bank. Pursuant to paragraph 50 of the consent decree, Hi-Mill must reimburse the United States by certified check for future response costs within thirty (30) days of receipt of an oversight bill. Such bill should be sent to:

Hi-Mill Manufacturing Co.  
Attention: Robert Beard  
1704 E. Highland  
Highland, Michigan 48356

Jack D. Shumate  
Butzel Long  
150 E. Jefferson, Suite 900  
Detroit, Michigan 48226

The attorney assigned to this case in the Office of Regional Counsel is Elizabeth Doyle. She may be contacted at 353-6126, if your staff have any questions.

Attachments

cc: Mary Ellen Ryan, Acting Chief  
Superfund Accounting Section (w/ attachments)  
Karla Johnson, RPM (w/ attachments)

Carla Jones, CDSI (w/o attachments)  
Oliver Warnsley, Chief  
Cost Recovery Unit (w/o attachments)  
Elizabeth Doyle (w/o attachment)  
Maureen Katz, DOJ (w/o attachments)

Instructions for Completion {Check Applicable Description(s)}

**FBM Contact and Telephone Number**